

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE REPEALING SECTION 15-16.1 IN ITS ENTIRETY AND RECODIFYING THE PROVISIONS OF SECTION 15-16.1 INTO SECTION 15-16 AND MAKING TECHNICAL CORRECTIONS AND CLARIFICATIONS TO SECTION 15-16 OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA**

BE IT ORDAINED, by the City Council of the City of Fayetteville, North Carolina, that:

**Section 1.** Section 15-16, soliciting in private residences and on streets and sidewalks—declared nuisance, is amended by deleting the same in its entirety and substituting the following therefor:

**Sec. 15-16. Soliciting in Private Residences and on Streets and Sidewalks—Declared Nuisance; Permits; Prohibition of Itinerant Merchants.**

- a. *Nuisance.* The practice of soliciting citizens and others on the streets and sidewalks of the city or on private property by solicitors and peddlers and stopping persons thereon without having been invited so to do by such for the purpose of soliciting subscriptions to publications and periodicals or for the sale of goods, wares and merchandise or for the purpose of disposing of or hawking such goods, wares, and merchandise is hereby declared to be a nuisance and unlawful.
- b. *Prohibited.* In the interest of public safety on city streets and the general welfare of those citizens traveling upon the streets, it is hereby declared to be a nuisance and unlawful for any person to go in or upon, or permit his representative to go in or upon, any public property, private residence, or premises in the city as an itinerant merchant. This does not apply to specialty markets or specialty market vendors as defined by this section.
- c. *Definitions.* The following terms whenever used or referred to in this section shall have the following respective meanings for the purposes of this section, unless a different meaning appears from the context:

**Itinerant Merchant** means a person, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location displays the goods for sale and sells the goods for sale at retail.

**Peddler** means a person who travels from place to place with an inventory of goods, who shall not remain in any one place for more than 12 hours or return to such location for the duration of the three-month permit, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods.

**Person** means an individual, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit.

**Solicitor** means a person who seeks to obtain subscriptions to publications and periodicals or attempts to sell goods or wares on behalf of a third party.

**Specialty Market** means a location other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

**Specialty Market Operator** means a person other than the state or a unit of local government who rents space at a location other than a permanent retail store to others for the purpose of selling goods at retail or offering goods for sale at retail.

- d. *Required permit.* It shall be unlawful for any person to go in or upon, or permit his representative to go in or upon, any public property, private residence or premises in the city as a solicitor or peddler, not having been requested or invited so to do by the owners/occupants of such private residence or premises or having secured their permission so to do for the purpose of soliciting orders for the sale of goods, wares, periodicals or merchandise, or for the purpose of distributing, disposing of, or peddling such goods, wares, periodicals or merchandise, or in a public place or on property exposed to the public view, to sell or offer to sell goods, merchandise or services, without first obtaining a permit from the City of Fayetteville as provided in this section.
- e. *Application.* Any person desiring to engage in the businesses or practices set forth in subsection (d) of this section shall file with the collection division of the finance department an application for a permit to do so. The application shall be in writing and made under oath. The application shall furthermore include the following:
  1. The applicant's name.
  2. Any prior name or alias under which the applicant is or has been known.
  3. The applicant's date of birth.
  4. The applicant's current place of residence, including a physical address and, if applicable, a mailing address.
  5. The applicant's social security number.
  6. The applicant's employment history for the one-year period preceding the submission of the application.
  7. The address and nature of business of the applicant's employer or principal, if any.
  8. Specify the goods, wares, periodicals or other merchandise to be offered for sale.

9. A detailed statement setting out how and from where the applicant obtained the goods, wares, periodicals or other merchandise to be offered for sale.
10. The location(s) where the sales will be conducted, or if the applicant intends to sell door-to-door, he or she must so state.
11. A statement specifying whether a motor vehicle will be used to transport the goods, wares, periodicals or other merchandise to be offered for sale and identify the operator of the motor vehicle.
12. A copy of the written authorization given by the owner of the property where the sales will take place to the applicant authorizing the applicant to use the property for the sale of goods described in subsection (d)(8) of this section.
13. A declaration that the information provided by the applicant is true, complete, and made under oath, which includes a certification that applicant understands that he/she can be prosecuted for knowingly providing false or incorrect information in the application.

The applicant shall also furnish with the application 2½-inch by 2½-inch photographs made within one year of the date of application and a fingerprint card completed by the applicant. If the application is filed by an employer, there shall also be filed a separate application for each solicitor, giving the information set forth in this subsection as to the qualifications of each solicitor and the application shall be signed and sworn by each solicitor. An application that is missing any part of the information required by this section shall be immediately and summarily denied by the collection division without referral to any other department.

If a motor vehicle will be used to transport the goods, wares, periodicals, or other merchandise to be offered for sale, the applicant and/or operator of the motor vehicle must provide proof of a valid driver's license. If the applicant and/or operator of the motor vehicle does not have a valid driver's license, the application will be summarily denied by the collection division without referral to any other department.

f. *Alarm Solicitors.* To obtain a permit as an alarm solicitor, the applicant shall, in addition to the application requirements set forth in this section, provide one of the following:

1. A valid license to engage in the alarm systems business issued by the North Carolina Alarm System Licensing Board.
2. A valid registration card issued by the North Carolina Alarm System Licensing Board.
3. A complete copy of all the required documentation from the applicant's employer to the North Carolina Alarm System Licensing Board seeking a registration card for the applicant, which pursuant to N.C.G.S. § 74D-8(d) may be used by the applicant until a registration card issued by the Board is received.

If the applicant seeking an alarm solicitor permit fails to produce one of the above, the application will be summarily denied by the collections division without referral to any other department.

- g. *Issuance; fee.* All applicants will be subject to a criminal history records background check. Upon investigation and review of the applicant's criminal background, the chief of police or his designee shall determine whether the applicant has ever been convicted of violating:
1. G.S. 14-1 et seq.;
  2. Any provision of G.S. 90-86 et seq.; G.S. 90-113.8A et seq.; G.S. 90-113.20 et seq.;
  3. This chapter;
  4. Any statute, ordinance, or law relating to the use of sales or subscription methods involving fraud, misrepresentation, or false or misleading statements; or
  5. Any moving violation of G.S. 20-1 et seq., including, but not limited to, failure to obtain a license before driving a motor vehicle, speeding, the careless and reckless operation of a motor vehicle, driving while impaired, and suspension or revocation of a driver's license.

If the applicant has been convicted of a felony, trespassing, damage to property, larceny, perjury, assault, or any crime of moral turpitude within the last five years, the chief of police or his designee shall deny the permit.

If the applicant has been convicted of any other offense the past five years or has ever been convicted of a felony, trespassing, damage to property, larceny, perjury, assault, or any crime of moral turpitude, the chief of police or his designee shall consider the nature of those offenses, the temporal proximity of those offenses, and any other factor relevant to the issuance of the permit, and shall, in his/her discretion, issue or deny the permit.

- h. *Denial of permits; appeal.* If the chief of police denies the issuance of the permit as specified in subsection (g) of this section, the applicant may appeal such decision to the city manager or his designee, whose decision shall be final.
- i. *Duration; renewal.* Any permit issued hereunder shall expire three months after its issuance; provided that such permit may be renewed for additional periods of three months, provided that all conditions for issuance of the original permit are met, and the applicant pays a renewal fee in accordance with the fee schedule adopted by the city council.
- j. *Transferability.* No permit issued under the provisions of this section shall be transferable.
- k. *Display.* Each permit issued under the provisions of this section shall be carried at all times by the permittee when he is engaged in soliciting or canvassing in the city. It shall be

unlawful for such permittee to fail or refuse to exhibit such permit whenever required to do so by any citizen of the city or police officer.

- l. *Limitations.* No permit issued under this section shall allow any person or his/her representative to go in or upon any private residence/premises in the city as a solicitor or peddler if the property owner/resident/tenant has posted in a reasonably discoverable manner a notice that solicitors are not permitted upon the property.
- m. *Revocation.* The permit issued under this section may be revoked for the following reasons:
  1. Making a false statement on the application for permit; or
  2. If the permittee, while possessing a permit issued pursuant to this chapter, is convicted of any offense identified in subsection (g) of this section.

If the chief of police has probable cause to believe that a permit should be revoked pursuant to the reasons set forth in this section, he or his designee shall give notice in writing of the revocation and the reason therefor to the permittee or his employer, at the address of the permittee or the business address of the employer. A certificate of mailing showing that the revocation was mailed first class mail and identifying the date of such mailing by an individual designated to provide such notice shall be conclusive as to compliance with the mailing provisions of this section in the absence of fraud. The revocation shall be effective upon receipt of the notice or within three days of the mailing, whichever first occurs. The permittee may appeal the revocation, provided that such appeal is made in writing to the city manager, 433 Hay Street, Fayetteville, North Carolina 28301. Appeal of the revocation must be postmarked within 48 hours of receipt of the notice of revocation or no later than five days following the date of the original mailing of the notice of revocation, whichever first occurs. Upon receipt of the notice, the city manager or his designee shall conduct a hearing within five working days, the date to be determined by the city manager or his designee, and the decision of the city manager or his designee shall be final.

- n. *No soliciting after certain hours.* Unless previously arranged with the consent of the owner, lessee, or manager of the property, there shall be no soliciting on public or private property after 9:00 p.m. or before 9:00 a.m.
- o. *Exemptions.*
  1. The requirements of subsections (d) through (m) of this section shall not apply to any charitable organization qualifying as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1954 as amended, or any persons, firms, or corporations acting under the sponsorship and aegis of such charitable organization under the following conditions:
    - a. The charitable organization must conduct its selling activity within the boundaries of the parking lot attached to the building or offices in which the charitable organization regularly conducts business;

- b. The charitable organization's activities do not hinder or obstruct parking spaces or ingress and egress from said parking lot for any other persons, firms, or corporations that have the right to regularly utilize the same parking lot; and
    - c. The charitable organization must meet a setback of 50 feet and not be located in a sight triangle.
  - 2. The prohibition in this section does not apply to a person meeting a setback of 50 feet and not be located in a sight triangle who sells:
    - a. Farm or nursery products produced by the merchant.
    - b. Printed material.
    - c. Wood for fuel.
    - d. Ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes or pies.
- p. *Produce stands.* The sale of fresh vegetables and produce, as defined by G.S. 66-256, from curbside stands or in a similar fashion shall be exempt from the provisions of this section provided that:
  - 1. Seller has grown the fresh vegetables and produce him or herself or possesses a bill of sale or written permission from the grower showing that the produce was lawfully obtained.
  - 2. Seller first obtains permission, in writing, from the property owner to conduct his selling activity.
  - 3. Seller must meet a setback of 50 feet and not be located in a sight triangle.
- q. *Impeding traffic on streets or roadways.*
  - 1. It shall be unlawful for any person to stand, sit, or loiter in any street or highway, including the shoulders or median strip, but excluding sidewalks, and to stop or attempt to stop any vehicle or to approach any stopped vehicle for the purpose of soliciting or accepting contributions of money, food or employment from the occupants of any vehicle or for the purpose of distributing merchandise or services to the occupants of any vehicle.
  - 2. This section shall not apply to (a) licensees, lessees, franchisees, permittees, employees or contractors of the city or of the North Carolina Department of Transportation engaged in inspection, construction, repair, or maintenance or in

making traffic or engineering surveys, or (b) emergency, public safety, solid waste or public works employees engaged in the performance of their respective occupations.

- r. *Outdoor seasonal sales.* Outdoor seasonal sales are temporary uses, which include, but are not limited to, Christmas tree sales, pumpkin sales, plant sales, fireworks, fresh produce sales and similar holiday or seasonal uses. Outdoor seasonal sales are not intended to include the sale of manufactured items, including, but not limited to, clothing, accessories, home furnishings, rugs, furniture, bedding, bicycles, automobile parts, recreational vehicles or household goods. Outdoor seasonal sales are permitted in all nonresidential zoning districts as a use by right subject to the standards of the underlying zoning district and the following:
1. Any operator of an outdoor seasonal sales use must receive a permit from the city, which describes the type of sales involved, and the duration of the sales operation.
  2. Seller must establish that he or she has produced the seasonal items him or herself or possesses a bill of sale or written permission from the producer showing that the seasonal items were lawfully obtained.
  3. Such sales shall not operate more than a total of 30 consecutive days per calendar year.
  4. The use may only be located on a vacant lot or on a lot occupied by a nonresidential use such as a church or school. The use shall not operate as an accessory to a principal residential use on a lot. In addition, the use shall not be located on a lot which adjoins a residential use unless the lot is located on a major thoroughfare.
  5. The use shall not involve or require the construction of a permanent building.
  6. Any signage which identifies the use shall be in accordance with the underlying zoning district.
  7. Five off-street parking spaces shall be provided for the use.
  8. The use, including all sale items, parking and maneuvering shall observe a setback of 50 feet and sale items shall not be located in the sight distance triangle.
  9. The operator is responsible for the removal of any vestige upon cessation of the seasonal sale including signage.
  10. There shall be no more than one outdoor seasonal sales permit issued at any one time on a tax parcel.
  11. No seasonal sales shall be permitted before 9:00 a.m. or after 9:00 p.m.

- s. *Penalties.* Notwithstanding the other provisions of this section that regulate streets, and unless the same conduct is subject to a greater punishment under the North Carolina General Statutes or North Carolina common law, a violation of any provision of this section is punishable pursuant to N.C.G.S. § 14-4 as a misdemeanor, and punishable by a fine of up to \$500.00.

**Section 2.** Section 15-16.1, prohibition of itinerant merchants; outdoor seasonal sales, is deleted in its entirety.

**Section 3.** It is the intention of the City Council, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code or of Ordinances, City of Fayetteville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.


Adopted this the 27th day of June, 2016.

CITY OF FAYETTEVILLE

  
NAT ROBERTSON, Mayor

ATTEST:



  
PAMELA J. MEGILL, City Clerk